

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
4M of Richmond Inc., Licensee of WLEE)	File Number EB-02-NF-124
4M Communications Inc., Owner of Antenna)	NAL/Acct. No. 200332640001
Structure 1231421)	FRN 3782182
Richmond, Virginia)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: November 4, 2002

By the Enforcement Bureau, Norfolk Office:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find 4M of Richmond, Inc., licensee of AM Station WLEE, and 4M Communications, Inc., owner of antenna structure 1231421, (collectively “4M”) apparently liable for a forfeiture in the amount of twenty-one thousand dollars (\$21,000) for willful violation of Sections 73.49 and 17.50 of the Commission's Rules (“Rules”), and willful and repeated violation of Section 73.1745(a) of the Rules.¹ Specifically, we find 4M apparently liable for failing to enclose its tower with an effective locked fence, failing to comply with prescribed antenna structure marking, and exceeding its nighttime power limit.

II. BACKGROUND

2. 4M Communications, Inc. owns antenna structure 1231421 located at 2516 Inman Avenue, Richmond, Virginia. The Commission Antenna Structure Registration (“ASR”) database lists the structure height as 75.6 meters above ground and prescribes lighting and painting. 4M of Richmond, Inc. is the licensee of AM station WLEE, licensed to Richmond, Virginia. 4M’s license authorizes WLEE to transmit with an energized antenna-tower, i.e., antenna-structure 1231421, located at 2516 Inman Avenue, Richmond, Virginia, with a daytime power limited to 1,000 watts and with a nighttime power limited to 13 watts.

3. On August 19, 2002, an agent of the Commission’s Norfolk Field Office (“Norfolk Office”) inspected the WLEE transmitter site. While WLEE was broadcasting with its antenna tower, the fencing around the base of the tower had no lock. The antenna structure paint was chipped and faded such that the paint no longer conformed to Federal Aviation Administration color specifications and rendered the contrasting color bands difficult to distinguish from less than one-quarter of a mile away, resulting in poor visibility of the structure.

4. After sunset on August 19, 2002, the Norfolk agent observed the antenna base current meter measuring current supplied to WLEE’s antenna tower and calculated the station’s power to exceed WLEE’s

¹ 47 C.F.R. §§ 73.49, 17.50 and 73.1745(a).

authorized nighttime power by more than 200%. On August 20, 2002, the agent inspected a portion of the WLEE logs for a three-day period. Those logs noted the use of power exceeding authorized nighttime power by at least 200% on August 17, 18 and 19, 2002.

5. On August 20, 2002, a 4M employee stated that ASR information for 4M Communications, Inc., and WLEE-license information for 4M of Richmond Inc., was correct. Another 4M employee said that the same principals owned both 4M Communications and 4M of Richmond. In addition, Commission records listed the same address for both 4M Communications Inc., and 4M of Richmond Inc. Also, State of Virginia Corporation records list identical corporate officers and the same address for the two entities.

III. DISCUSSION

6. Section 73.49 requires licensees to provide locked and effective fencing around antenna structures with radio frequency potential at their bases. On August 19, 2002, while WLEE energized its antenna tower, its antenna tower base fencing had no lock.

7. Section 17.50 requires tower owners to clean or repaint their antenna structures as often as necessary to maintain good visibility. The WLEE antenna structure registration prescribed painting with contrasting colors, but on August 19, 2002, the structure's paint was chipped and faded and the contrasting color bands could not be seen clearly from less than one-quarter of a mile away.

8. Section 73.1745(a) prohibits licensees from operating at times, or with modes or power, other than those specified and made part of the license. During the nights of August 17, 18, and 19, 2002, WLEE exceeded its authorized nighttime power by at least 200%.

9. Based on the evidence before us, we find 4M willfully² violated Sections 73.49 and 17.50 of the Rules by failing to maintain effective locked fencing and by failing to clean or repaint its antenna structure to maintain good visibility. In addition, 4M willfully and repeatedly³ violated Section 73.1745(a) of the Rules by exceeding nighttime power limits.

10. Pursuant to Section 1.80(b)(4) of the Rules,⁴ the base forfeiture amount for failing to maintain effective locked fencing is \$7,000; for failing to comply with prescribed marking is \$10,000; and for

² Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act" See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387-88 (1991).

³ The term "repeated," when used with reference to the commission or omission of any act, "means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day." 47 U.S.C. § 312(f)(2).

⁴ 47 C.F.R. § 1.80(b)(4).

exceeding power limits is \$4,000. In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Communications Act of 1934, as amended (“Act”), which include the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.⁵ Considering the entire record and applying the factors listed above, this case warrants a \$21,000 forfeiture.

IV. ORDERING CLAUSES

11. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act,⁶ and Sections 0.111, 0.311 and 1.80 of the Rules,⁷ 4M is hereby NOTIFIED of this APPARENT LIABILITY FOR A FORFEITURE in the amount of twenty-one thousand dollars (\$21,000) for willful violation of Sections 73.49 and 17.50 of the Rules, and willful and repeated violation of Section 73.1745(a) of the Rules by failing to maintain effective locked fencing, failing to maintain good antenna structure visibility and by exceeding authorized nighttime power limits.

12. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this NAL, 4M SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

13. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. and FRN referenced above. Requests for payment of the full amount of this NAL under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.⁸

14. The response, if any, must be mailed to Federal Communications Commission, Office of the Secretary, 445 12th Street SW, Washington DC 20554, Attn: Enforcement Bureau-Technical & Public Safety Division and MUST INCLUDE THE NAL/Acct. No. referenced above.

15. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (“GAAP”); or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

⁵ 47 U.S.C. § 503(b)(2)(D).

⁶ 47 U.S.C. § 503(b).

⁷ 47 C.F.R. §§ 0.111, 0.311, 1.80.

⁸ See 47 C.F.R. § 1.1914.

16. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this NAL, either in your response to the NAL or in a separate filing to be sent to the Technical & Public Safety Division. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC's Office of Communications Business Opportunities (OCBO) set forth in Attachment A of this Notice of Apparent Liability. This information will be used for tracking purposes only. Your response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to Section 503(b) of the Communications Act. If you have questions regarding any of the information contained in Attachment A, please contact OCBO at (202) 418-0990.

17. IT IS FURTHER ORDERED THAT a copy of this NAL shall be sent by regular mail and Certified Mail Return Receipt Requested to 4M of Richmond, Inc. / 4M Communications, Inc., 306 West Broad Street, Richmond, VA, 23220.

FEDERAL COMMUNICATIONS COMMISSION

Joseph P. Husnay
Resident Agent, Norfolk Office, Enforcement Bureau

Attachment

4M of Richmond Inc
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306 West Broad Street
Richmond VA 23220

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